

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>CAMERON FAGEN, (██████████) Plaintiff,</p> <p>v.</p> <p>GRANDVIEW UNIVERSITY; ADAM EHLERS; JAKE ROSANDER; ERIK MOORE; ZAC CRAIN; ERIC BAGBY; ROSS IDDINGS,</p> <p>Defendants.</p>	<p>CASE NO. CL126016</p> <p>PETITION AND JURY DEMAND</p> <p>FILED 2012 AUG 29 PM 12:21 CLERK DISTRICT COURT</p>
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COMES NOW the Plaintiff, CAMERON FAGEN, by and through counsel, on information and belief formed after an inquiry reasonable under the circumstances, and alleges against Defendants as follows:

PARTIES

1. At all times material hereto, Plaintiff FAGEN was a citizen and resident of Keokuk County, IA.
2. At all times material hereto, Defendants EHLERS, ROSANDER, MOORE, CRAIN, BAGBY, and IDDINGS were students at Defendant GRANDVIEW UNIVERSITY in Polk County, IA.
3. At all times material hereto, Defendant GRANDVIEW UNIVERISTY is a privately funded university with all programs located in Polk County, IA.
4. At all times material hereto, Defendants EHLERS, ROSANDER, MOORE, CRAIN, BAGBY, and IDDINGS engaged in the conduct alleged on the grounds of Defendant GRANDVIEW UNIVERSITY.

FACTUAL BACKGROUND

1. On April 12, 2012, Plaintiff FAGEN was in the common room of his dorm, Nielson Hall, at Defendant GRANDVIEW UNIVERSITY.
2. Plaintiff FAGEN began to rough house with individual DEFENDANTS in the common room. It seemed to be all in good fun until individual DEFENDANTS proceeded to wrap Plaintiff FAGEN up in a discarded piece of carpet.
3. The piece of carpet was discarded in the common room by members of the staff of GRANDVIEW UNIVERISTY.
4. Individual DEFENDANTS used duct tape to secure Plaintiff FAGEN within the roll of carpet, immobilizing his arms and legs.
5. Individual DEFENDANTS picked up the carpet roll with Plaintiff FAGEN inside and placed him in a corner of the common room. His feet were off the ground and his arms and legs continued to be immobilized.
6. Individual DEFENDANTS tied a rope around the carpet roll and proceeded to punch, kick and beat him with a broom handle while he was unable to move within the carpet roll.
7. Individual DEFENDANTS laid Plaintiff FAGEN back down and rolled him up into the Northwest corner of the room where Individual DEFENDANTS proceeded to set him up once again.
8. Plaintiff FAGEN fell straight onto his chin, which caused a bilateral mandible and temporal bone fracture, as well as a chin laceration.
9. Plaintiff FAGEN laid on the ground bleeding and was unable to free himself from the carpet roll until he received help from a nearby friend.

10. The entire altercation between Plaintiff FAGEN and Individual DEFENDANTS lasted thirty eight (38) minutes.

11. Plaintiff FAGEN was brought to Mercy Hospital but was quickly transported to University of Iowa Medical Center, as Mercy Hospital felt unable to provide proper care for the complicated and serious injuries suffered in the incident.

12. Dr. Charles Ringold of the University of Iowa Hospitals and Clinics performed Dentoalveolar surgery on Plaintiff FAGEN.

13. Plaintiff FAGEN was discharged on April 13, 2012.

14. Plaintiff FAGEN was unable to talk between April 13 and May 4, 2012.

15. Plaintiff FAGEN was only able to consume liquids until May 3, 2012 through a straw and could not eat solid food until the end of June.

16. Plaintiff FAGEN was forced to transfer to a different University as he felt unsafe on the campus of Defendant GRANDVIEW UNIVERSITY.

17. Plaintiff FAGEN continues to have serious and permanent injury.

COUNT I

NEGLIGENCE AGAINST DEFENDANT GRANDVIEW UNIVERSITY

18. The common room in which Plaintiff FAGEN was assaulted, battered and bullied was owned and supervised by Defendant GRANDVIEW UNIVERSITY at 1200 Grandview Avenue, Des Moines, IA 50316.

19. Defendant Grandview was negligent in each of the following particulars:

- a. Defendant failed to take sufficient steps to monitor the common room despite multiple employees employed for that very purpose;

- b. Defendant's employees failed to stop the attack on Plaintiff FAGEN, despite videotape thirty eight (38) minutes long visible to and going directly to those security employees;
- c. Defendant knew, or should have known, that said carpeting did not belong in the common room and was potentially dangerous;
- d. The carpeting was left unattended for days, weeks, or months in the common room despite resident assistants on the floor, security guards, and constant video monitoring,
- e. Defendant committed other acts and omissions which were in violation of the rules of a reasonable and prudent university's responsibilities for the safety of its resident students.

20. Under the doctrine of *respondeat superior* Defendant GRANDVIEW

UNIVERSITY is liable for the actions of its employees acting in the course and scope of their employment.

21. The negligence of Defendant GRANDVIEW UNIVERSITY was a direct and proximate cause of the injuries and damages sustained by the Plaintiff FAGEN.

22. As a proximate result of the negligence aforesaid, Plaintiff FAGEN has suffered severe and painful permanent injuries, has endured and will continue to endure great physical and mental pain, physical and mental disability and loss of enjoyment of life and has in the past and will in the future incur expenses for medical, hospital, physical therapy, drugs and medication for the treatment of said injuries, has lost time from his studies and may have lost earning capacity.

23. Defendant acted willfully and recklessly and with intentional and willful disregard for the rights of Plaintiff and for the consequences, and Plaintiff is therefore entitled to punitive damages.

WHEREFORE, Plaintiff CAMERON FAGEN requests judgment against Defendant in an amount which will fully and fairly compensate him for his injuries and damages, and for punitive damages in an amount sufficient to punish the Defendant and deter the Defendant and others from the same or similar wrongful conduct, and for interest and costs as allowed by law and such other relief as may be just in the premises.

COUNT II

PREMISES LIABILITY AGAINST DEFENDANT GRANDVIEW UNIVERSITY

24. At all times material to this Petition, Defendant Grandview controlled the premises where Plaintiff FAGEN was injured.

25. Defendant Grandview knew, or should have known that Plaintiff was being assaulted and battered in the dormitory common's room.

26. Defendant knew, or should have known that Plaintiff was unable to protect himself from injury.

27. Defendant was negligent in failing to take reasonable security measures to protect the Plaintiff from the individual defendants.

28. The negligence of the Defendant Grandview was a proximate cause of injuries and damage to the plaintiff.

29. As a proximate result of the negligence aforesaid, Plaintiff FAGEN has suffered severe and painful permanent injuries, has endured and will continue to endure great physical and

mental pain, physical and mental disability and loss of enjoyment of life and has in the past and will in the future incur expenses for medical, hospital, physical therapy, drugs and medication for the treatment of said injuries, has lost time from his studies and may have lost earning capacity.

30. Defendant acted willfully and recklessly and with intentional and willful disregard for the rights of Plaintiff and for the consequences, and Plaintiff is therefore entitled to punitive damages.

WHEREFORE, Plaintiff CAMERON FAGEN requests judgment against Defendant in an amount which will fully and fairly compensate him for his injuries and damages, and for punitive damages in an amount sufficient to punish the Defendant and deter the Defendant and others from the same or similar wrongful conduct, and for interest and costs as allowed by law and such other relief as may be just in the premises.

COUNT III

ASSAULT AND BATTERY AGAINST INDIVIDUAL DEFENDANTS

31. Individual DEFENDANTS placed Plaintiff FAGEN in fear of offensive physical contact.

32. Individual DEFENDANTS caused Plaintiff to suffer offensive physical contact.

33. Individual DEFENDANTS contact with Plaintiff was unwanted and offensive and caused bodily injury.

34. The defendants' conduct was the direct and proximate cause of the injuries and damages sustained by the Plaintiff FAGEN.

35. Individual DEFENDANTS touching would be unwanted and offensive to any reasonable person in Plaintiff's position.

36. As a proximate result of the acts aforesaid, Plaintiff FAGEN has suffered severe and painful permanent injuries, has endured and will continue to endure great physical and mental pain, physical and mental disability and loss of enjoyment of life and has in the past and will in the future incur expenses for medical, hospital, physical therapy, drugs and medication for the treatment of said injuries, has lost time from his studies and may have lost earning capacity.

37. Individual DEFENDANTS actions were willful, wanton or reckless for which punitive damages are warranted in an amount that will punish him and deter him and others from like conduct.

WHEREFORE, Plaintiff CAMERON FAGEN requests judgment against Defendant in an amount which will fully and fairly compensate him for his injuries and damages, and for punitive damages in an amount sufficient to punish the Defendant and deter the Defendant and others from the same or similar wrongful conduct, and for interest and costs as allowed by law and such other relief as may be just in the premises.

COUNT IV

BULLYING AGAINST INDIVIDUAL DEFENDANTS

38. According to I.C.A. § 280.28 Harassment and bullying prohibited, bullying is any electronic, written, verbal or physical act or conduct toward a student which is based on any actual or perceived trait or characteristics of the student and which creates an objectively hostile school environment that meets one or more of the following conditions:

- a. Places the student in reasonable fear of harm to the student's person or property.
- b. Has a substantially detrimental effect on the student's physical or mental health.
- c. Has the effect of substantially interfering with a student's academic performance.

- d. Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

39. Plaintiff FAGEN was targeted as a result of his physical attributes, as he was physically smaller than Individual DEFENDANTS.

40. Individual DEFENDANTS physically harmed Plaintiff FAGEN based on Plaintiff's perceived traits. This created a hostile school environment that caused Plaintiff to transfer and attempt to finish his education at a different institution.

41. Individual DEFENDANTS physical conduct and actions placed Plaintiff FAGEN in reasonable fear of harm to his person or property.

42. Individual DEFENDANTS physical conduct and actions had a substantially detrimental effect on Plaintiff FAGEN's physical or mental health.

43. Individual DEFENDANTS physical conduct and actions substantially interfered with the student's academic performance, as he had to transfer schools after the incident. Plaintiff FAGEN would not have transferred to another education institution otherwise.

44. Individual DEFENDANTS physical conduct and actions substantially interfered with his ability to participate in or benefit from the services, activities, or privileges provided by a school.

45. The defendants' conduct was the direct and proximate cause of the injuries and damages sustained by the Plaintiff FAGEN.

46. As a proximate result of the acts aforesaid, Plaintiff FAGEN has suffered severe and painful permanent injuries, has endured and will continue to endure great physical and mental pain, physical and mental disability and loss of enjoyment of life and has in the past and will in the future

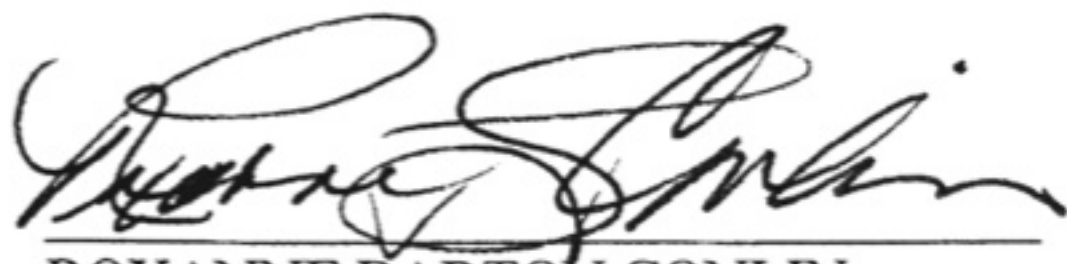
incur expenses for medical, hospital, physical therapy, drugs and medication for the treatment of said injuries, has lost time from his studies and may have lost earning capacity.

47. Individual DEFENDANTS actions were willful, wanton or reckless for which punitive damages are warranted in an amount that will punish him and deter him and others from like conduct.

WHEREFORE, Plaintiff CAMERON FAGEN requests judgment against Defendant in an amount which will fully and fairly compensate him for his injuries and damages, and for punitive damages in an amount sufficient to punish the Defendant and deter the Defendant and others from the same or similar wrongful conduct, and for interest and costs as allowed by law and such other relief as may be just in the premises.

JURY DEMAND

The Plaintiff hereby demands a trial by jury of all of the issues arising out of the matters pled herein.



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